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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,889	09/16/2003	Kerry Stephen McClure	27735-11	4514
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ULMER & BERNE, LLP 600 VINE STREET SUITE 2800 CINCINNATI, OH 45202				
			EXAMINER LARSON, JUSTIN MATTHEW	
			ART UNIT 3782	PAPER NUMBER
			MAIL DATE 08/21/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/663,889	Applicant(s) MCCLURE ET AL.	
	Examiner Justin M. Larson	Art Unit 3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-5, 11-15, 21-25 and 27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 11-15, 21, 24, 25 and 27 is/are rejected.
- 7) ☒ Claim(s) 22 and 23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

1 A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/30/07 has been entered.

### *Claim Rejections - 35 USC § 103*

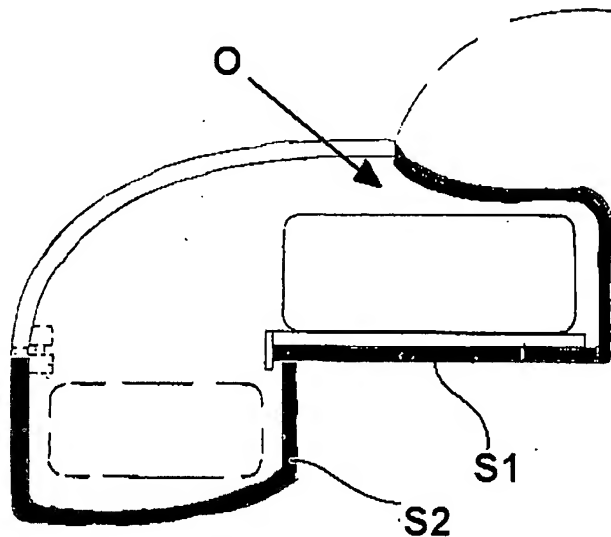
2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-5, 11, 14, 15, 21, and 27 are rejected under 35 U.S.C. 103(a) as being anticipated by Wilson (US 4,230,246 A) in view of Fukushima et al. (2001/0052712), and further in view of Pilliod (US 5,484,198 A).

Regarding claims 1 and 11, Wilson discloses a vehicle having a support structure comprising: a first shell (S1, see figure below) attached to the vehicle, the first shell including first and second end portions and a bottom portion (13) extending at least partially between the first and second end portions, the first shell at least partially defining a storage chamber and including an opening providing access (O, see figure below) to the storage chamber, the opening being adjacent to the first end portion; a second shell (S2, see figure below) extending outwardly from the first shell; a support

member (15) adapted to support a spare tire (S), the support member being slidably positioned above the bottom portion and movable back and forth along a movement path from a first position (Figure 1) in which the support member is substantially disposed within the first shell and a second position (Figure 2) in which the support member is at least partially disposed outside the first shell and disposed at least partially inside the second shell.



Wilson fails to disclose the lower surface of the support member directly contacting the bottom of the first shell. Instead, Wilson discloses a series of rollers (33) positioned on the bottom of the first shell. The support member slides on the rollers instead of directly contacting the first shell. Wilson also fails to disclose a pair of wheels rotatably attached to the first shell, the wheels cooperating with the bottom portion of the first shell to therebetween receive side sections of the support member such that the wheels contact the side sections when the support member is at the first position for

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limiting movement of the support member with respect to the first shell in at least one direction substantially perpendicular to the movement path.

Fukushima et al. also disclose a similar sliding support member housed within a shell (14) and teach that the lower surface of the support member directly contacts a bottom portion (17) of the shell (Figure 3, col. 5 lines 51-54) in smooth sliding contact. Pilliod discloses a drawer slidably received in a shell (52) and teaches that a pair of wheels (42) are mounted to the sides of the shell such that the wheels cooperate with the bottom portion of the shell to therebetween receive the side sections (22) of the drawer for limiting movement of the drawer with respect to the shell in at least one direction substantially perpendicular to the movement path to assist in the sliding of the drawer. It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the bottom-mounted roller system of Wilson with the side mounted wheel system of Pilliod as a mere substitution of known sliding drawer roller systems, in order to achieve the predictable result of a support member whose lower surface directly contacted a bottom portion of a shell, as taught by Fukushima et al.

Regarding claim 2, the second end portion of the first shell as disclosed by Wilson includes rounded corners (Figures 1 and 2), the round shape corresponding to the round shape of a spare tire in that both are round or curved, effectively satisfying the limitations of the claim.

Regarding claim 3, Wilson fails to disclose a stopper being disposed adjacent the second end portion and configured to engage the support member. Fukushima et al., however, disclose stoppers (15) adjacent a second end portion of the shell (14) and

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configured to engage the support member. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include at least one stopper member adjacent the second end portion of the first shell of Wilson, as taught by Fukushima et al., in order to help a user extend the support member from its stored position as shown in Figure 1 and also to absorb at least some of the impact force applied to the support member when pushed back into the stored position.

Regarding claim 4, Wilson discloses an outwardly projecting protrusion/flange (71) on the support member but fails to disclose a complementary inwardly extending recess on the bottom portion of the first shell member, the recess adapted to receive the protrusion. Wilson discloses a recess (73) in which the protrusion/flange is received to maintain the support member in the position shown in Figure 2. When in the first position, a position locking mechanism (75/77/79) is used to maintain the support member in its position. It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the position locking mechanism (75/77/79) of Wilson with the other position locking mechanism (71/73) taught by Wilson, as both are effective means for retaining the support member in the desired position, and the predictable result would be a support member lockable in two positions. This modification would implement a recess similar to (73) in the bottom of the first shell.

Regarding claim 5, the modified Wilson device as applied to claim 4 above includes a protrusion on the support member and a recess or groove in the first shell configured to engage the protrusion rather than a protrusion on the first shell and a

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recess on the support member. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form a protrusion on the first shell and a recess on the support member, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. In re Einstein, 8 USPQ 167.

Regarding claim 14, the shell of the modified Wilson device clearly has two sidewalls, or side portions, extending between the front and back walls, or the first and second end portions of the shell.

Regarding claim 15, the modified Wilson device as applied to claim 4 above includes a first shell having a recess (as implemented in the combination), a second shell having a recess (73), and a support member with a flange (71), wherein the flange is configured to selectively engage and the first shell's recess and the second shell's recess.

Regarding claim 21, the first shell and the support member of the modified Wilson device define respective apertures that are aligned when the support member is at the first position. The aperture of the support member is found where a screw mounts one of the side flanges (20) of Pilliod to the support member of Wilson and the aperture of the first shell is found where the wheel (42) of Pilliod is mounted to the first shell of Wilson. These apertures of the modified Wilson device are aligned when the support member is in the first position as seen in Figure 3 of Pilliod.

Regarding claim 27, Wilson discloses a retention member (29) fixedly attached to the first shell, the retention member interfacing a side section (51) of the support

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member and configured to permit sliding movement of the support member along the movement path with respect to the shell and being operative to limit movement of the support member with respect to the shell in at least one direction (upward) substantially perpendicular to the movement path.

4. Claims 12, 13, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson in view of Fukushima et al. and Pilliod as applied above, and further in view of Sotiroff et al. (US 6,516,983 B2).

The modified Wilson device includes the claimed features except for the vehicle in which it is mounted being a pickup truck. The modified Wilson device is implemented in the trunk of a car, as taught by Wilson himself. Sotiroff et al., however, teaches that a storage system implemented in the trunk of a car (Figures 1-4) can also be implemented in the bed of a pickup truck (Figures 5-6). One of ordinary skill in the art would have found it obvious to somehow mount the modified Wilson storage system in the bed of a pickup truck, as taught by Wilson, so that pickup truck owners could also enjoy the benefit of such a useful storage system.

***Allowable Subject Matter***

5. Claims 22 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The locking member (pin 75 and aperture 79) of Wilson satisfied the limitations of these claims in the previously mailed Office action, however, these claims depend from currently amended claim 15 which has been satisfied by replacing the locking member



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(75/79) with a different locking member (flange 71 and recess 73) as applied to claim 4 above. Examiner finds no motivation or teaching in the art of record for maintaining the original locking member (75/79) of Wilson to satisfy claims 22 and 23 while also implementing the second locking member (71/73) in order to satisfy claim 15.

### ***Response to Arguments***

6. Applicant's arguments filed 7/30/07 have been fully considered but they are not persuasive. Applicant has asserted that none of the combined references teaches the claimed wheel or flange. Examiner notes that the wheel was previously mentioned in claims 9 and 10, which were rejected in the combination of Wilson, Fukushima et al., and Pilliod in paragraph 4 of the previously mailed Office action. This combination is now set forth in paragraph 3 of this Office action. Examiner also notes that the flange was previously mentioned in claim 4, which was rejected in the combination of Wilson and Fukushima et al. in paragraph 2 of the previously mailed Office action. This combination is still set forth in paragraph 3 of this Office action.

### ***Conclusion***

7. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on Monday - Thursday, 7am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JML  
8/10/07

  
NATHAN J. NEWHOUSE  
SUPERVISORY PATENT EXAMINER